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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,977	08/25/2003	Barry D. Kuban	895,675-004	2832
34263 7590 10/09/2007 O'MELVENY & MYERS LLP 610 NEWPORT CENTER DRIVE 17TH FLOOR NEWPORT BEACH, CA 92660			EXAMINER CHENG, JACQUELINE	
			ART UNIT 3768	PAPER NUMBER
			MAIL DATE 10/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/647,977	Applicant(s) KUBAN ET AL.	
	Examiner Jacqueline Cheng	Art Unit 3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-14,16-19,21-37 and 39-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-14,16-19,21-37 and 39-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1, 3-14, 16-19, 21-37, 39-41 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1, 3, 6-9, 11-14, 16-19, 21-27, 31-35, 37, 39, and 42-46** are rejected under 35 U.S.C. 102(b) as being anticipated by Prause (US 6,148,095). Prause discloses a system and method of acquiring blood vessel data in the form of images comprising a catheter and data-gathering and processing devices of a data fusion unit on a programmed computer and a data storage unit (col. 4 line 8-35). The IVUS catheter is withdrawn at a fixed speed while the images are being taken (col. 5 line 5-8). The images can be correlated so as to acquire the data during a certain heart phase of interest. This phase correlation uses an ECG to obtain the heart phase of interest to ensure the images are obtained under consistent conditions (col. 6 line 24-33).

Claim Rejections - 35 USC § 103

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4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 4 and 41** are rejected under 35 U.S.C. 103(a) as being unpatentable over Prause in view of Vince (US 6,200,268 B1). Prause does not disclose a plurality of transducers spaced circumferentially, but it would be obvious to one skilled in the art to use any comparable IVUS system with the system of Prause. Vince discloses such an IVUS system that comprises an array of transducers circumferentially positioned (col. 3 line 50-53) so therefore it would be obvious to one skilled in the art at the time of the invention to combine Vince with Prause to further the utility of Prause to obtain data from any angle of the blood vessel without having to spend time rotating the catheter to position the transducer in the correct direction.

6. **Claim 5, 10, 28-30, 36, and 40** are rejected under 35 U.S.C. 103(a) as being unpatentable over Prause in view of Slager (US 5,771,895). Prause does not disclose that the transducer is adapted to rotate, but it would be obvious to one skilled in the art to use any comparable IVUS system with the system of Prause. Slager discloses such an IVUS system that comprises a transducer that can rotate (col. 6 line 50-55) wherein the rotational orientation can be identified (col. 3 line 50-54) and is adjusted to obtain an optimal 3-D reconstruction (blood vessel data acquired when the transducer is oriented in a predetermined position, col. 3 line 40-42). So therefore it would be obvious to one skilled in the art at the time of the invention to combine

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Slager with Prause to further the utility of Prause to obtain data from any particular desired angle of the blood vessel.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Under section the 4th bullet point of "1.1 Background" of the article *Dynamic Three-dimensional Reconstruction of ICUS Images based on an ECG-Gated Pull-Back Device* by Bruining et al. discloses that a well know method of acquiring ICUS data sets is a motorized pull back (giving a constant rate) and using ECG to acquire only one phase during an R-R interval (acquiring data during a cyclic portion of a heartbeat data).

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline Cheng whose telephone number is 571-272-5596.

The examiner can normally be reached on M-F 10:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader can be reached on 571-272-4740. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JC


ELENI MANTIS MERCADER
SUPERVISORY PATENT EXAMINER